

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CANDACE PENA,

Plaintiff,

v.

Civil No. 1:17-cv-01138

HIDALGO MEDICAL SERVICES, INC.,
JONATHAN LEGGETT, and ASHLEY AARON,

Defendants.

NOTICE OF REMOVAL OF ACTION

The United States of America, acting on behalf of Hidalgo Medical Services, Inc., Jonathan Leggett, and Ashley Aaron, named Defendants in the above-captioned action, hereby gives notice to this Court of the removal of a civil action commenced in the Sixth Judicial District Court, County of Grant, State of New Mexico, cause No. D-608-CV-2017-00205.

The United States submits the following:

1. A civil action has been brought in the Sixth Judicial District Court, State of New Mexico, against Hidalgo Medical Services, Inc., Jonathan Leggett, and Ashley Aaron, for allegedly providing negligent care to Plaintiff, beginning on or about August, 2014 (“Complaint”).

2. Defendant Hidalgo Medical Services, Inc. (“HMS”) is a grantee of the Department of Health and Human Services, which is operated by the United States of America. By operation of the Federally Supported Health Centers Assistance Act (“FSHCAA”) (42 U.S.C. § 233(g)-(n)), said Defendant is covered under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346(b), 2401(b), 2671-80.

3. Filed with this Notice of Removal is Exhibit A, a Certification by James D. Tierney, Acting United States Attorney for the District of New Mexico, certifying that Defendants Jonathan Leggett Ph.D. and Ashley Aaron, LPCC, were acting within the scope of their employment at the time of the allegations and/or incidents giving rise to this suit. The authority to certify scope of office or employment has been delegated to the United States Attorney. *See* 28 C.F.R. § 15.4.

4. In accordance with 28 U.S.C. § 2679(d)(2), upon certification that Defendants Leggett and Aaron were acting within the scope of their employment with the Government, the action commenced in New Mexico State Court shall be removed to the District Court for the District of New Mexico and such action or proceeding shall be deemed to be an action or proceeding brought against the United States.

5. The Sixth Judicial District Court action is properly subject to removal under 28 U.S.C. § 233(c). Plaintiff asserts in her Complaint for Damages that at all times material to the allegations, the alleged actions took place while Defendants Leggett and Aaron were deemed as employees of the United States Department of Health and Human Services. Plaintiff's allegations are controlled by the provisions of the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671 *et seq.*, and this is, therefore, an action over which the United States District Court has exclusive jurisdiction.

6. Attached to this Notice of Removal as Exhibit B are copies of all pleadings that have been received by and are in the possession of the United States in this action.

WHEREFORE, the United States gives notice that Cause No. D-608-CV-2017-00205 in the Sixth Judicial District Court for the County of Grant, State of New Mexico, is removed to this Court.

Respectfully submitted,

JAMES D. TIERNEY
Acting United States Attorney

Electronically filed November 14, 2017

ROBERTO D. ORTEGA
Assistant United States Attorney
P.O. Box 607
Albuquerque, NM 87103
(505) 224-1519
roberto.ortega@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2017, I served the foregoing pleading on the following parties via first class mail, postage prepaid, addressed to:

Jonathan Diener
P.O. Box 27
Mule Creek, NM 88051

R. Stefan R. Chacon
100 Sun Avenue NE, Suite 410
Albuquerque, NM 87109

/s/ Roberto D. Ortega
ROBERTO D. ORTEGA
Assistant United States Attorney